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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,643	09/30/2003	Victor T. Massey	16240.S016	1141

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BERENATO & WHITE, LLC  
6550 ROCK SPRING DRIVE  
SUITE 240  
BETHESDA, MD 20817

EXAMINER
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STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

MAIL DATE	DELIVERY MODE
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08/04/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/673,643	<b>Applicant(s)</b> MASSEY ET AL.	
	<b>Examiner</b> Gregory J. Strimbu	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 49-63, 65-83 and 85-89 is/are pending in the application.
- 4a) Of the above claim(s) 71-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49, 51-57, 65-70, 81-83, 85-87 and 89 is/are rejected.
- 7) ☒ Claim(s) 50, 58-63 and 88 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Election/Restrictions***

Per the restriction requirement of April 17, 2007, claims 71-80 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 14, 2007.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49, 51, 52, 54, 56, 57, 66, 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin (US 4429493) in view of Hendrickson et al. (US 6684571) and Massey et al. (US 6491326). St. Aubin discloses an astragal assembly for attachment to a passive door 14 having interior and exterior surfaces opposite to one another and an outer edge extending from the exterior surface to the interior surface, the astragal assembly comprising:

a frame 24, adapted to extend between the sill and the transom of a doorway, comprising an exterior portion 42, an interior portion 36, 40 spaced from and situated opposite to the exterior portion to establish an elongated open channel (labeled below) there between, and a side portion 26 extending between the exterior portion and the interior portion and adapted to be attached to the outer edge of the passive door, the

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elongated open channel having a channel opening extending between the exterior portion and the interior portion and opposed to the side portion, said exterior portion being a hollow elongated tubular member (labeled below);

a spacer (labeled below) protruding from said side portion opposite said channel and extending away from said channel;

an insert 38 retained in the elongated open channel of the frame, the insert having a groove sized to accommodate a locking mechanism.

St. Aubin is silent concerning a wooden insert and a strike plate.

However, Hendrickson et al. discloses a solid wooden insert 76a.

It would have been obvious to one of ordinary skill in the art to provide the insert of St. Aubin with a wooden construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Additionally, Massey et al. discloses an astragal assembly comprising a strike plate hardware 118 (fig. 15) attached to an insert 25 (fig. 2) since both elements are attached to the frame 28, the strike plate hardware extends between interior and exterior portions of the astragal assembly, the strike plate hardware 118 having a strike plate opening (not numbered, but shown in figure 15) vertically aligned with a groove of the insert formed by the protrusions of the insert as shown in figure 2.

It would have been obvious to one of ordinary skill in the art to provide St. Aubin with strike plate hardware, as taught by Massey et al., so that the active door 12 of St. Aubin can be easily latched and unlatched from the passive door 14.

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With respect to claim 51, the insert 38 extends substantially the entire length of the elongated open channel as shown in figure 8 of St. Aubin.

With respect to claim 56, the frame 24 is metallic as shown by the metal cross sectional shading in figure 6 of St. Aubin.

With respect to claim 58, the interior flange 36, 40 extends past the side portion for overlapping the interior surface of the passive door 14 as shown in figure 6.

With respect to claim 66, the exterior portion and the interior portion have hooks (labeled below).

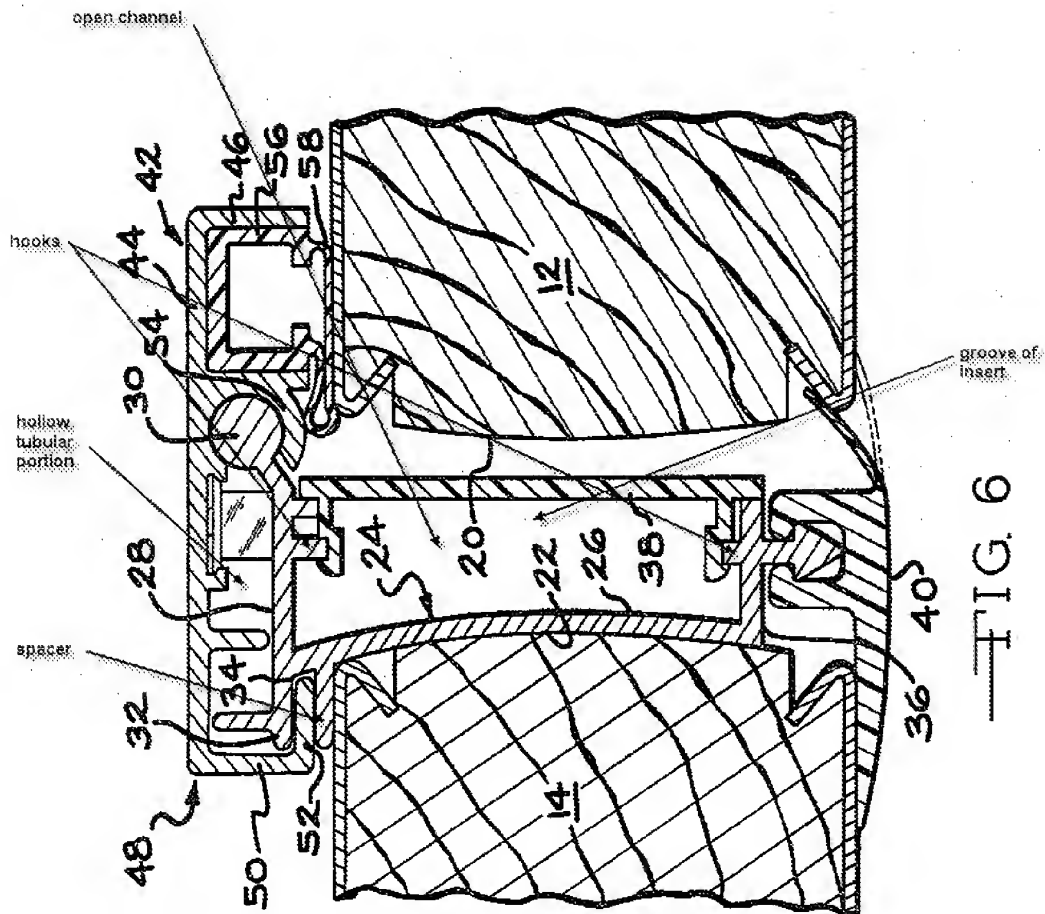


FIG. 6

Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin in view of Hendrickson et al. and Massey et al. as applied to claims 49, 51, 52, 54, 56, 57, 66, 69 and 70 above. St. Aubin, as modified above, is silent concerning two separate wooden strips.

However, it would have been obvious to one of ordinary skill in the art to provide the insert of St. Aubin, as modified above, with a construction comprising two separate wooden strips since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v Bemis Co.*, 193 USPQ 8. It should be noted that such an insert would comprise a base portion comprising a wood that is less expensive and more resilient to more securely engage the channel and a top portion comprising a wood having an aesthetic appearance, i.e., a veneer.

Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin in view of Hendrickson et al. and Massey et al. as applied to claims ### above. St. Aubin, as modified above, is silent concerning an aluminum construction.

However, Massey et al. discloses an aluminum frame 28 in column 5, lines 65-66.

It would have been obvious to one of ordinary skill in the art to provide St. Aubin, as modified above, with an aluminum construction, as taught by Massey et al., to provide a lightweight astragal assembly while maintaining the corrosion resistance of the astragal assembly.

Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin in view of Hendrickson et al. and Massey et al. as applied to claims ### above. St. Aubin, as modified above, is silent concerning preformed openings.

However, Massey et al. discloses a frame 28 having a side portion 45 with preformed openings 24 in figure 7.

It would have been obvious to one of ordinary skill in the art to provide St. Aubin, as modified above, with openings, as taught by Massey et al., to increase the ease with which the astragal assembly can be attached to the passive door.

Claims 67 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin in view of Hendrickson et al. and Massey et al. as applied to claim 53 above. St. Aubin, as modified above, is silent concerning a portion of the wooden insert abutting the side portion.

However, the wooden insert 76a of Hendrickson et al. engages a side portion of an open channel 66 as shown in figure 2B.

It would have been obvious to one of ordinary skill in the art to provide St. Aubin, as modified above, with a portion that abuts the side portion, as taught by Hendrickson et al., to more securely mount the insert within the open channel.

Claims 81-83, 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin (US 4429493) in view of Massey et al. (US 6491326). St. Aubin discloses an astragal comprising:

a frame 24 comprising an exterior portion 42 and an interior portion 36, 40, the exterior portion having an outer wall (labeled below), an inner wall 28, a first side (labeled below) and a second side (labeled below) combining to form an elongated



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hollow member, an exterior flange (labeled below) extending from the first side of the exterior portion and a stop 46 extending from the second side of the exterior portion, the interior portion 36, 40 spaced from and opposed to the exterior portion and comprising an interior flange (labeled below) opposite from and substantially parallel to the exterior flange, a side portion 26 extending between the exterior portion and the interior portion, and a spacer (labeled below) protruding from the major surface of the side portion in a direction that is substantially perpendicular to the major surface and substantially parallel to said interior flange; wherein the exterior portion, the interior portion, and the side portion collectively form a channel, with the spacer extending away from the channel; and

an insert member 38 retained substantially within the channel of the frame to present an outer surface, the insert member having a groove (labeled below) sized to accommodate a locking mechanism;

a hook (labeled below) (claim 82);

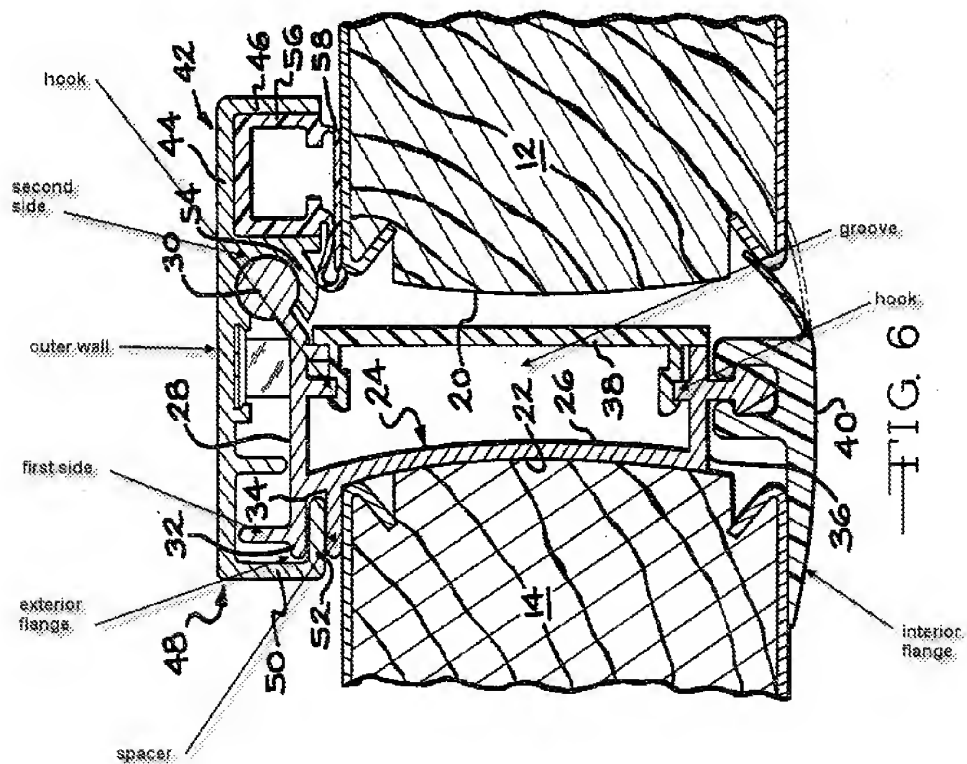
a hook (labeled below) (claim 83). Wright is silent concerning a gasket, a fastener formation, and a strike plate.

However, Massey et al. discloses an astragal comprising a side portion 45, a gasket 7 interconnecting the side portion 45 and an exterior portion 83 and a strike plate hardware 21 extending between the interior and exterior portions, wherein the side portion includes fastener formations 24 as shown in figure 7.

It would have been obvious to one of ordinary skill in the art to provide Wright with a gasket, fastener formations, and a strike plate, as taught by Massey et al., to

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thermally isolate the exterior portion from the interior portion, to more easily attach the astragal to a passive door, and to enable the active door to be releasably latched to the astragal without damaging the astragal, respectively. It should be noted that the groove of the insert member 38 would be vertically aligned with the opening of the strike plate. Additionally, the strike plate would be attached to the outer surface of the insert member 38 since the strike plate is attached to the side portion 26 which is attached to the insert member 38.



Claim 85 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin in view of Massey et al. as applied to claims 81-83, 86 and 87 above, and further in view of Hendrickson et al. (US 6684571). Hendrickson et al. discloses a solid wooden insert 76a.

It would have been obvious to one of ordinary skill in the art to provide the insert of St. Aubin, as modified above, with a wooden construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.

Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over St. Aubin in view of Massey et al. as applied to claims 81-83, 86 and 87 above, and further in view of Wright (US 6453616). Wright discloses an astragal comprising an outer wall 122, wherein the outer wall includes a decorative face denoted by the two protrusions on the outer wall as shown in figure 5.

It would have been obvious to one of ordinary skill in the art to provide St. Aubin, as modified above, with a decorative face, as taught by Wright, to improve the aesthetics of the astragal.

### ***Allowable Subject Matter***

Claims 50, 58-63 and 88 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach a spacer capable of preventing the outer edge of the passive door from contacting the major surface of the side portion of the frame and for allowing air flow between the outer edge of the passive door and the side portion of the frame when the astragal assembly is attached thereto. Although references such as Wang (US 6192638) disclose spacers 20 in figure 7, one of ordinary skill in the art would have no motivation to provide a reference such as St. Aubin with spacers absent the applicant's disclosure.

### ***Response to Arguments***

Applicant's arguments filed May 12, 2010 have been fully considered but they are moot in view of the new grounds of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/  
Primary Examiner, Art Unit 3634